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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LUIS SANCHEZ NIETO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-75962

Agency No. A79-544-374

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 13, 2007 **

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

Luis Sanchez Nieto, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' order denying his application for

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the agency's continuous physical presence determination for substantial evidence. *See Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006). We grant the petition for review and remand.

An intervening change in the law requires us to remand on the issue of continuous physical presence. In *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 619 (9th Cir. 2006), we held that administrative voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the alien is informed of the terms of the departure and knowingly and voluntarily accept the terms. *See also Tapia v. Gonzales*, 430 F.3d 997, 1004 (9th Cir. 2005). In the record, there is no indication that Sanchez Nieto was informed of the terms of his first departure or that he accepted them voluntarily or knowingly, and his second departure appears to be a border turnaround. At the time the agency addressed these issues it did not have the benefit of our decisions in *Ibarra-Flores* and *Tapia*.

Accordingly, we grant the petition for review and remand for further proceedings consistent with *Ibarra-Flores* and *Tapia*.

PETITION FOR REVIEW GRANTED; REMANDED.